

PHILLIP H. BAER, ESQUIRE
Phillip H. Baer, Ltd.
Identification No. 03745
19th Floor, 1515 Market Street
Philadelphia, Penna. 19102
PHONE: 215-557-9000

Counsel for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RACHEL M. WHITE : CIVIL ACTION

vs. :

DAVID W. HAMEN :

- and -

DISCOUNT CAR & TRUCK :

RENTALS, LTD. :

ORDER

AND NOW, this _____ day of _____, 2002, upon consideration of the within pleading and defendants, DAVID W. HAMEN and DISCOUNT CAR & TRUCK RENTALS, LTD.'s failure to prove the amount in controversy requirement, it is hereby ORDERED that Plaintiff's Motion to Remand is GRANTED and this action is REMANDED to the Court of Common Pleas of Philadelphia County.

BY THE COURT:

J.

PHILLIP H. BAER, ESQUIRE
Phillip H. Baer, Ltd.
Identification No. 03745
19th Floor, 1515 Market Street
Philadelphia, Penna. 19102
PHONE: 215-557-9000

Counsel for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RACHEL M. WHITE	:	CIVIL ACTION
vs.	:	
DAVID W. HAMEN	:	
- and -	:	
DISCOUNT CAR & TRUCK	:	
RENTALS, LTD.	:	

PLAINTIFFS' MOTION TO REMAND

1. This is a claim for personal injuries sustained by Rachel M. White in a motor vehicle accident which occurred on or about April 8, 2001. Defendants removed this action from the Court of Common Pleas of Philadelphia County on the basis of diversity jurisdiction.

2. This Motion to Remand is based upon defendants' failure to prove the amount in controversy, as required by this Court in the recent case of Sdregas vs. The Home Depot, Inc., E.D. Pa. #01-CV-5851 (PICS Case No. 02-0475), decided April 4, 2002, (Exhibit "A").

WHEREFORE, plaintiff respectfully requests this Honorable Court enter an Order in

the form attached hereto.

PHILLIP H. BAER, LTD.

BY: _____
PHILLIP H. BAER, ESQUIRE
Counsel for Plaintiff

PHB:rlh

PHILLIP H. BAER, ESQUIRE
Phillip H. Baer, Ltd.
Identification No. 03745
19th Floor, 1515 Market Street
Philadelphia, Penna. 19102
PHONE: 215-557-9000

Counsel for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RACHEL M. WHITE : CIVIL ACTION

vs. :

DAVID W. HAMEN :

- and -

DISCOUNT CAR & TRUCK :

RENTALS, LTD. :

:

MEMORANDUM OF LAW

In Sdregas vs. The Home Depot, Inc., E.D. Pa. #01-CV-5851 (PICS Case No. 02-0475), decided April 4, 2002, (Exhibit "A"), defendant, in support of its position, furnished this Court a copy of the Complaint which, *inter alia*, alleged "serious injuries"; and, according to Judge Kauffman:

"Defendant contends that the amount in controversy in this case exceeds \$75,000, due to the nature of Mrs. Sdregas' alleged injuries, the length of her initial hospitalization, and her post-hospitalization treatment, as well as her age and past medical history. In support of its position, Defendant has submitted copies of medical bills for Mrs. Sdregas' visit to the emergency room and five-day stay at St. Mary Medical Center, which total \$14,817. (Def.'s

Resp. Ex. A.) Defendant also offers correspondence between Plaintiffs' counsel and a general liability examiner at Sedgwick Claims Management Services, Inc., indicating that Mrs. Sdregas has received treatment from her family physician, an opthamologist, a neuropsychologist, and a psychiatrist, but does not include any records of actual medical expenses incurred for this treatment."

Notwithstanding the record evidence of serious injuries in Sdregas, Judge Kauffman remanded to the Court of Common Pleas stating that this Court lacks subject matter jurisdiction in that defendant did not offer sufficient proof of the value of the injured plaintiff's claim. In Sdregas, in addition to the Complaint alleging serious injuries, hospitalizations and post hospitalization treatment, defense counsel offered medical proof. In the case at bar, defendants, David W. Hamen and Discount Car and Truck Rentals, Ltd., offered less. In fact, they offered absolutely no evidence at all as to the value of plaintiff's claims. Moreover, as Judge Kauffman stated:

"When a case is removed from state court, the removing party bears the burden of proving the existence of federal subject matter jurisdiction, including establishing the amount in controversy. Meritcare, 166 F.3d at 222. Moreover, the removal statute is 'to be strictly construed against removal and all doubts should be resolved in favor of remand."

. . . .

"Accordingly, the Court lacks subject matter jurisdiction and will therefore remand this action to state court." (Emphasis added.)

Defendants have the burden of proving at the time of filing their Notice of Removal and not at a later date that the Court has jurisdiction. For example, a defendant cannot file a

Notice of Removal, then conduct discovery and, based upon information obtained through the discovery process, argue that the Court has jurisdiction. Defendants must prove jurisdiction at the time of filing the Notice of Removal. Subsequent events cannot be used to support a Notice of Removal.

Defendants, David W. Hamen and Discount Car & Truck Rentals, Ltd.'s position clearly has less validity than that of the defendant in Sdregas, The Home Depot, Inc., and thus, it is respectfully requested that this Honorable Court follow its decision in Sdregas and remand to the Court of Common Pleas.

WHEREFORE, plaintiff respectfully requests this Honorable Court enter an Order in the form attached hereto.

Respectfully submitted,

PHILLIP H. BAER, LTD.

BY: _____
PHILLIP H. BAER, ESQUIRE
Counsel for Plaintiffs

PHILLIP H. BAER, ESQUIRE
Phillip H. Baer, Ltd.
Identification No. 03745
19th Floor, 1515 Market Street
Philadelphia, Penna. 19102
PHONE: 215-557-9000

Counsel for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RACHEL M. WHITE : CIVIL ACTION

vs. :

DAVID W. HAMEN :

- and -

DISCOUNT CAR & TRUCK :

RENTALS, LTD. :

:

CERTIFICATE OF SERVICE

PHILLIP H. BAER, ESQUIRE, counsel for Plaintiff, hereby certifies that a true and correct copy of the within Plaintiff's Motion to Remand was served on counsel for Defendants on June 12, 2002, by first-class mail as follows:

Thomas A. Kuzmick, Esquire
Rawle and Henderson, LLP
The Widener Building
One South Penn Square
Philadelphia, Penna. 19107

PHILLIP H. BAER, LTD.

BY: _____
PHILLIP H. BAER, ESQUIRE
Counsel for Plaintiff

COMMONWEALTH OF PENNSYLVANIA :
 : SS
COUNTY OF PHILADELPHIA :

PHILLIP H. BAER, ESQUIRE, being duly sworn according to law, deposes and says that he is the attorney for the plaintiffs in the within action; that as such he is authorized to make this affidavit; and that the facts set forth in the foregoing pleading are true and correct to the best of his knowledge, information and belief.

PHILLIP H. BAER, ESQUIRE

SWORN TO and SUBSCRIBED

before me this _____ day of
_____, 2002.

NOTARY PUBLIC

